

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
CLARK FORK DIVISION  
KOOTENAI RIVER BASIN (76D)  
PRELIMINARY DECREE

\* \* \* \* \*

CLAIMANTS: Margaret L. Wallace; Gerald E. Wallace

CASE 76D-0280-R-2023  
76D 100428-00

**NOTICE OF FILING OF MASTER'S REPORT**

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

## **MASTER'S REPORT**

### **Statement of the case**

Domestic claim 76D 100428-00 received issue remarks. Issue remarks often result from Department of Natural Resources and Conservation (“DNRC”) claims examination. Claims examination confirms the historical use of water right claims and identifies issues with claims. Montana law requires the Water Court to resolve issue remarks.

### **Issues**

Are the issue remarks on domestic claim 76D 100428-00 resolved?

### **Findings of fact**

1. Domestic statement of claim 76D 100428-00 included fire protection as an incidental use. Fire protection historically occurred from April 1 to November 30.
2. The Preliminary Decree abstract for claim 76D 100428-00 identifies the historically accurate source and point of diversion.

### **Principles of law**

1. A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content. Section 85-2-227, MCA. Prima facie proof may be overcome by other evidence that proves, by a preponderance of the evidence, that an element of the prima facie claim is incorrect. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. A preponderance of the evidence is a “modest standard” and is evidence that demonstrates the fact to be proved is “more probable than not.” *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 348, 240 P.3d 628.
2. The Montana Water Court is permitted to use information submitted by the Department of Natural Resources and Conservation, the statement of claim, information from approved compacts, and any other data obtained by the Court to evaluate water right claims. Section 85-2-231(2), MCA.

3. When resolving issue remarks, the Montana Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA.

4. The Montana Water Court has the authority to resolve issue remarks when the claim file and information available to the Court provide a sufficient basis to do so. Section 85-2-248(3), MCA.

## **Analysis**

### **Issue remark resolution**

Margaret L. Wallace and Gerald E. Wallace (“Wallaces”) filed an amendment for domestic claim 76D 100428-00 to include the incidental use of fire protection from April 1 to November 30. The claim appeared in the Preliminary Decree with the following issue remark:

AN AMENDMENT WAS SUBMITTED ON 11/27/2020 REQUESTING TO AMEND THE PERIOD OF DIVERSION. THE AMENDMENT WAS NOT PROCESSED. THE AMENDMENT WILL BE REVIEWED AFTER THE ISSUANCE OF THE PRELIMINARY DECREE.

Statement of claim 76D 100428-00 included the statement that the claim was available year-round for fire protection. An information remark stating “This claim is incidentally used for fire protection from April 1 to November 30” should be added to memorialize the historically accurate use of the claim.

Claim 76D 100428-00 appeared in the Preliminary Decree with the following issue remark:

SOURCE NAME AND POINT OF DIVERSION WERE MODIFIED AS A RESULT OF DNRC REVIEW UNDER MONTANA WATER COURT REEXAMINATION ORDERS. IF NO OBJECTIONS ARE FILED TO THIS CLAIM, THESE ELEMENTS WILL REMAIN AS THEY APPEAR ON THIS ABSTRACT AND THE REMARK WILL BE REMOVED FROM THE CLAIM.

The foregoing issue remark provided the opportunity for Wallaces and other water users to object to the claim. No one objected to the claim.

### **Conclusions of law**

Prima facie statement of claim 76D 100428-00 justifies the addition of the incidental use information remark to the claim abstract and resolves the amendment issue

remark on the claim.

Preliminary Decree abstract 76D 100428-00 identifies its historically accurate elements. The source name and point of diversion issue remark appearing on the claim served its notice purpose.

## **Recommendations**

Domestic claim 76D 100428-00 should be modified as follows to accurately reflect historical use.

**PURPOSE:** DOMESTIC

### **ADD INFORMATION REMARK:**

**THIS CLAIM IS INCIDENTALLY USED FOR FIRE PROTECTION FROM APRIL 1 TO NOVEMBER 30.**

The issue remarks should be removed from the claim abstract.

A Post Decree Abstract of Water Right Claim accompanies this report to confirm implementation of the recommendations in the state's centralized water right record system.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

## **Service via USPS Mail**

Margaret L. Wallace  
Gerald E. Wallace  
15950 Bull Lake Rd  
Troy, MT 59935-9449

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**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM  
KOOTENAI RIVER  
BASIN 76D**

**Water Right Number:** 76D 100428-00 STATEMENT OF CLAIM

**Version:** 3 -- POST DECREE

**Status:** ACTIVE

**Owners:** MARGARET L WALLACE  
15950 BULL LAKE RD  
TROY, MT 59935 9449

GERALD E WALLACE  
15950 BULL LAKE RD  
TROY, MT 59935 9449

**Priority Date:** AUGUST 10, 1972

**Type of Historical Right:** USE

**Purpose (use):** DOMESTIC

THIS CLAIM IS INCIDENTALLY USED FOR FIRE PROTECTION FROM APRIL 1 TO NOVEMBER 30.

**Flow Rate:** 40.00 GPM

**Volume:** 1.50 AC-FT

**Households:** 1

**Maximum Acres:** 1.00

**Source Name:** LAKE CREEK (BULL LAKE)

**Source Type:** SURFACE WATER

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	5	NESE	32	29N	33W	LINCOLN

**Period of Diversion:** JUNE 1 TO SEPTEMBER 30

**Diversion Means:** PUMP

**Subdivision:** UPHAM BEACH TRACT/LOT: 023

**Period of Use:** JUNE 1 TO SEPTEMBER 30

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1.00		SE	32	29N	33W	LINCOLN

**Subdivision:** UPHAM BEACH TRACT/LOT: 023

**Total:** 1.00